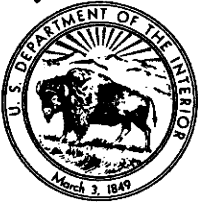


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# United States Department of the Interior

OFFICE OF SURFACE MINING  
RECLAMATION AND ENFORCEMENT  
SUITE 310  
625 SILVER AVENUE, S.W.  
ALBUQUERQUE, NEW MEXICO 87102



In Reply Refer To:

June 20, 1990

RECEIVED  
JUN 25 1990

DOGM  
OIL, GAS & MINING

Dr. Dianne R. Nielson, Director  
Division of Oil, Gas and Mining  
Department of Natural Resources  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, UT 84180-1203

Re: Ten-Day Notice 90-02-116-1

Dear Dr. Nielson:

In accordance with 30 CFR 842.11, the following is a written finding regarding the Division of Oil, Gas and Mining's (DOGM) response to the above Ten-Day Notice (TDN):

On May 15, 1990, the Albuquerque Field Office (AFO) conducted a joint random sample oversight inspection of the Soldier Canyon Mine. The inspection resulted in the issuance of TDN 90-02-116-1 (dated May 24, 1990) which was received by DOGM on May 29, 1990. The DOGM response was received by AFO on June 11, 1990, and will be considered a timely response.

As discussed by telephone between Lowell Braxton and Henry Austin (of our respective staffs) on June 12, 1990, the DOGM response, citing UCA 1953 40-10-17(o) *et seq.*, does not completely address the violation noted in TDN 90-02-116-1.

The statute cited requires reporting for blasting within one-half mile of the nearest dwelling or structure, as indicated in DOGM's response. However, the statute at UCA 1953 40-10-17(o)(ii) requires a detailed log of each blast and does not limit itself to only those blasts conducted within one-half mile of the nearest dwelling or structure. The only statutory references to the one-half mile zone found at UCA 1953 40-10-17(o)(i) and 40-10-17(o)(v) concern distribution of the proposed blasting schedule and requests for preblasting surveys, respectively, and do not discuss the blasting log.

Dr. Dianne R. Nielson

2


The TDN cites UMC 817.68(d) and (b) as the specific regulation violated and reads, "Failure to record accurate blasting logs for each surface blast. Direction and distance to the nearest dwelling was not completed on daily blasting records for any blasting records reviewed; and location of each blast was not accurately documented on any blasting records reviewed." The TDN citation does not concern itself with regulatory requirements to conduct blasting activities within a half-mile of a dwelling or structure but, instead, is focused on data required to be recorded for each blast. The first subsection of the regulation cited [UMC 817.68(d)] is very specific as follows, "Direction and distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building either - (1) Not located in the permit area; or (2) Not owned nor leased by the person who conducts the underground coal mining activities." Note that the citation makes no reference to the nearest structure.

The second subsection cited [UMC 817.68(b)] concerning location of the blast is less specific in that the citation does not specify how the location data is to be recorded. DOGM's response refers to available map references found in the approved Mining and Reclamation Plan. AFO believes this is adequate to satisfy UMC 817.68(b) and suggests that these references be included in the blasting records. However, DOGM's response fails to convince AFO that the requirements of UMC 817.68(d) have been met.

As evidenced by the random sample inspection, a violation of the performance standards exists, and DOGM's failure to address this violation in accordance with the requirements of Utah's program [UMC 843.12(a)(1)], (R614-400-321), constitutes an arbitrary and capricious response. Therefore, OSM finds DOGM's response to be inappropriate.

If you disagree with these findings, you may request an informal review in accordance with 30 CFR 842.11(b)(1)(iii)(A).

Sincerely,

  
ACTING FOR  
Robert H. Hagen, Director  
Albuquerque Field Office